

Calendar No. 385

109TH CONGRESS
2D SESSION

S. 2489

[Report No. 109–226]

To implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, signed by the United States on June 12, 1998.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2006

Mr. LUGAR, from the Committee on Foreign Relations, reported the following original bill; which was read twice and placed on the calendar

A BILL

To implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, signed by the United States on June 12, 1998.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “U.S. Additional Pro-
3 tocol Implementation Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **ADDITIONAL PROTOCOL.**—The term “Addi-
7 tional Protocol”, when used in the singular form,
8 means the Protocol Additional to the Agreement be-
9 tween the United States of America and the Inter-
10 national Atomic Energy Agency for the Application
11 of Safeguards in the United States of America, with
12 Annexes, signed at Vienna June 12, 1998 (T. Doc.
13 107–7).

14 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
15 **TEES.**—The term “appropriate congressional com-
16 mittees” means the Committee on Armed Services,
17 the Committee on Foreign Relations, and the Com-
18 mittee on Appropriations of the Senate and the
19 Committee on Armed Services, the Committee on
20 International Relations, and the Committee on Ap-
21 propriations of the House of Representatives.

22 (3) **COMPLEMENTARY ACCESS.**—The term
23 “complementary access” means the exercise of the
24 IAEA’s access rights as set forth in Articles 4 to 6
25 of the Additional Protocol.

1 (4) EXECUTIVE AGENCY.—The term “executive
2 agency” has the meaning given such term in section
3 105 of title 5, United States Code.

4 (5) FACILITY.—The term “facility” has the
5 meaning set forth in Article 18i. of the Additional
6 Protocol.

7 (6) IAEA.—The term “IAEA” means the
8 International Atomic Energy Agency.

9 (7) JUDGE OF THE UNITED STATES.—The term
10 “judge of the United States” means a United States
11 district judge, or a United States magistrate judge
12 appointed under the authority of chapter 43 of title
13 28, United States Code.

14 (8) LOCATION.—The term “location” means
15 any geographic point or area declared or identified
16 by the United States or specified by the Inter-
17 national Atomic Energy Agency.

18 (9) NUCLEAR NON-PROLIFERATION TREATY.—
19 The term “Nuclear Non-Proliferation Treaty”
20 means the Treaty on the Non-Proliferation of Nu-
21 clear Weapons, done at Washington, London, and
22 Moscow July 1, 1968, and entered into force March
23 5, 1970 (21 UST 483).

24 (10) NUCLEAR-WEAPON STATE PARTY AND
25 NON-NUCLEAR-WEAPON STATE PARTY.—The terms

1 “nuclear-weapon State Party” and “non-nuclear-
2 weapon State Party” have the meanings given such
3 terms in the Nuclear Non-Proliferation Treaty.

4 (11) PERSON.—The term “person”, except as
5 otherwise provided, means any individual, corpora-
6 tion, partnership, firm, association, trust, estate,
7 public or private institution, any State or any polit-
8 ical subdivision thereof, or any political entity within
9 a State, any foreign government or nation or any
10 agency, instrumentality or political subdivision of
11 any such government or nation, or other entity lo-
12 cated in the United States.

13 (12) SITE.—The term “site” has the meaning
14 set forth in Article 18b. of the Additional Protocol.

15 (13) UNITED STATES.—The term “United
16 States”, when used as a geographic reference, means
17 the several States of the United States, the District
18 of Columbia, and the commonwealths, territories,
19 and possessions of the United States and includes all
20 places under the jurisdiction or control of the United
21 States, including—

22 (A) the territorial sea and the overlying
23 airspace;

24 (B) any civil aircraft of the United States
25 or public aircraft, as such terms are defined in

paragraphs (17) and (41), respectively, of section 40102(a) of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).

(14) WIDE-AREA ENVIRONMENTAL SAMPLING.—The term “wide-area environmental sampling” has the meaning set forth in Article 18g. of the Additional Protocol.

SEC. 3. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TITLE I—GENERAL PROVISIONS

SEC. 101. AUTHORITY.

(a) IN GENERAL.—The President is authorized to implement and carry out the provisions of this Act and the Additional Protocol and shall designate through Executive order which executive agency or agencies of the United States, which may include but are not limited to the Department of State, the Department of Defense, the

1 Department of Justice, the Department of Commerce, the
 2 Department of Energy, and the Nuclear Regulatory Com-
 3 mission, shall issue or amend and enforce regulations in
 4 order to implement this Act and the provisions of the Ad-
 5 ditional Protocol.

6 (b) INCLUDED AUTHORITY.—For any executive agen-
 7 cy designated under subsection (a) that does not currently
 8 possess the authority to conduct site vulnerability assess-
 9 ments and related activities, the authority provided in sub-
 10 section (a) includes such authority.

11 (c) EXCEPTION.—The authority described in sub-
 12 section (b) does not supersede or otherwise modify any
 13 existing authority of any Federal department or agency
 14 already having such authority.

15 **TITLE II—COMPLEMENTARY** 16 **ACCESS**

17 **SEC. 201. REQUIREMENT FOR AUTHORITY TO CONDUCT** 18 **COMPLEMENTARY ACCESS.**

19 (a) PROHIBITION.—No complementary access to any
 20 location in the United States shall take place pursuant to
 21 the Additional Protocol without the authorization of the
 22 United States Government in accordance with the require-
 23 ments of this Act.

24 (b) AUTHORITY.—

1 (1) IN GENERAL.—Complementary access to
2 any location in the United States subject to access
3 under the Additional Protocol is authorized in ac-
4 cordance with this Act.

5 (2) UNITED STATES REPRESENTATIVES.—

6 (A) RESTRICTIONS.—In the event of com-
7 plementary access to a privately owned or oper-
8 ated location, no employee of the Environ-
9 mental Protection Agency or of the Mine Safety
10 and Health Administration or the Occupational
11 Safety and Health Administration of the De-
12 partment of Labor may participate in the ac-
13 cess.

14 (B) NUMBER.—The number of designated
15 United States representatives accompanying
16 IAEA inspectors shall be kept to the minimum
17 necessary.

18 **SEC. 202. PROCEDURES FOR COMPLEMENTARY ACCESS.**

19 (a) IN GENERAL.—Each instance of complementary
20 access to a location in the United States under the Addi-
21 tional Protocol shall be conducted in accordance with this
22 title.

23 (b) NOTICE.—

24 (1) IN GENERAL.—Complementary access re-
25 ferred to in subsection (a) may occur only upon the

1 issuance of an actual written notice by the United
2 States Government to the owner, operator, occupant,
3 or agent in charge of the location to be subject to
4 complementary access.

5 (2) TIME OF NOTIFICATION.—The notice under
6 paragraph (1) shall be submitted to such owner, op-
7 erator, occupant, or agent as soon as possible after
8 the United States Government has received notifica-
9 tion that the IAEA seeks complementary access. No-
10 tices may be posted prominently at the location if
11 the United States Government is unable to provide
12 actual written notice to such owner, operator, occu-
13 pant, or agent.

14 (3) CONTENT OF NOTICE.—

15 (A) IN GENERAL.—The notice required by
16 paragraph (1) shall specify—

17 (i) the purpose for the complementary
18 access;

19 (ii) the basis for the selection of the
20 facility, site, or other location for the com-
21plementary access sought;

22 (iii) the activities that will be carried
23 out during the complementary access;

24 (iv) the time and date that the com-
25plementary access is expected to begin, and

1 the anticipated period covered by the com-
2plementary access; and

3 (v) the names and titles of the inspec-
4tors.

5 (4) SEPARATE NOTICES REQUIRED.—A sepa-
6rate notice shall be provided each time that com-
7plementary access is sought by the IAEA.

8 (c) CREDENTIALS.—The complementary access team
9 of the IAEA and representatives or designees of the
10 United States Government shall display appropriate iden-
11tifying credentials to the owner, operator, occupant, or
12agent in charge of the location before gaining entry in con-
13nection with complementary access.

14 (d) SCOPE.—

15 (1) IN GENERAL.—Except as provided in a war-
16rant issued under section 203, and subject to the
17United States Government's rights under the Addi-
18tional Protocol to limit complementary access, com-
19plementary access to a location pursuant to this title
20may extend to all activities specifically permitted for
21such locations under Article 6 of the Additional Pro-
22tocol.

23 (2) EXCEPTION.—Unless required by the Addi-
24tional Protocol, no inspection under this title shall
25extend to—

1 (A) financial data (other than production
2 data);

3 (B) sales and marketing data (other than
4 shipment data);

5 (C) pricing data;

6 (D) personnel data;

7 (E) patent data;

8 (F) data maintained for compliance with
9 environmental or occupational health and safety
10 regulations; or

11 (G) research data.

12 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECU-
13 RITY.—In carrying out their activities, members of the
14 IAEA complementary access team and representatives or
15 designees of the United States Government shall observe
16 applicable environmental, health, safety, and security reg-
17 ulations established at the location subject to complemen-
18 tary access, including those for protection of controlled en-
19 vironments within a facility and for personal safety.

20 **SEC. 203. CONSENTS, WARRANTS, AND COMPLEMENTARY**
21 **ACCESS.**

22 (a) IN GENERAL.—

23 (1) PROCEDURE.—

24 (A) CONSENT.—Except as provided in
25 paragraph (2), an appropriate official of the

1 United States Government shall seek or have
2 the consent of the owner, operator, occupant, or
3 agent in charge of a location prior to entering
4 that location in connection with complementary
5 access pursuant to sections 201 and 202. The
6 owner, operator, occupant, or agent in charge of
7 the location may withhold consent for any rea-
8 son or no reason.

9 (B) ADMINISTRATIVE SEARCH WAR-
10 RANT.—In the absence of consent, the United
11 States Government may seek an administrative
12 search warrant from a judge of the United
13 States under subsection (b). Proceedings re-
14 garding the issuance of an administrative
15 search warrant shall be conducted ex parte, un-
16 less otherwise requested by the United States
17 Government.

18 (2) EXPEDITED ACCESS.—For purposes of ob-
19 taining access to a location pursuant to Article
20 4b.(ii) of the Additional Protocol in order to satisfy
21 United States obligations under the Additional Pro-
22 tocol when notice of two hours or less is required,
23 the United States Government may gain entry to
24 such location in connection with complementary ac-
25 cess, to the extent such access is consistent with the

1 Fourth Amendment to the United States Constitu-
2 tion, without obtaining either a warrant or consent.

3 (b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-
4 PLEMENTARY ACCESS.—

5 (1) OBTAINING ADMINISTRATIVE SEARCH WAR-
6 RANTS.—For complementary access conducted in the
7 United States pursuant to the Additional Protocol,
8 and for which the acquisition of a warrant is re-
9 quired, the United States Government shall first ob-
10 tain an administrative search warrant from a judge
11 of the United States. The United States Government
12 shall provide to such judge all appropriate informa-
13 tion regarding the basis for the selection of the facil-
14 ity, site, or other location to which complementary
15 access is sought.

16 (2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-
17 TIVE SEARCH WARRANTS.—A judge of the United
18 States shall promptly issue an administrative search
19 warrant authorizing the requested complementary
20 access upon an affidavit submitted by the United
21 States Government—

22 (A) stating that the Additional Protocol is
23 in force;

1 (B) stating that the designated facility,
2 site, or other location is subject to complemen-
3 tary access under the Additional Protocol;

4 (C) stating that the purpose of the com-
5 plementary access is to verify the correctness
6 and completeness of information declared by
7 the United States Government pursuant to Ar-
8 ticle 2 of the Additional Protocol;

9 (D) stating that the requested complemen-
10 tary access is in accordance with Article 4 of
11 the Additional Protocol;

12 (E) containing assurances that the scope
13 of the IAEA's complementary access, as well as
14 what it may collect, shall be limited to the ac-
15 cess provided for in Article 6 of the Additional
16 Protocol;

17 (F) listing the items, documents, and areas
18 to be searched and seized;

19 (G) stating the earliest commencement and
20 the anticipated duration of the complementary
21 access period, as well as the expected times of
22 day during which such complementary access
23 will take place; and

1 (H) stating that the location to which
2 entry in connection with complementary access
3 is sought was selected either—

4 (i) because there is probable cause, on
5 the basis of specific evidence, to believe
6 that information required to be reported
7 regarding a location pursuant to regula-
8 tions promulgated under this Act is incor-
9 rect or incomplete, and that the location to
10 be accessed contains evidence regarding
11 that violation; or

12 (ii) pursuant to a reasonable general
13 administrative plan based upon specific
14 neutral criteria.

15 (3) CONTENT OF WARRANTS.—A warrant
16 issued under paragraph (2) shall specify the same
17 matters required of an affidavit under that para-
18 graph. In addition, each warrant shall contain the
19 identities of the representatives of the IAEA on the
20 complementary access team and the identities of the
21 representatives or designees of the United States
22 Government required to display identifying creden-
23 tials under section 202(c).

1 **SEC. 204. PROHIBITED ACTS RELATING TO COMPLEMEN-**
2 **TARY ACCESS.**

3 It shall be unlawful for any person willfully to fail
4 or refuse to permit, or to disrupt, delay, or otherwise im-
5 pede, a complementary access authorized by this Act or
6 an entry in connection with such access.

7 **TITLE III—CONFIDENTIALITY OF**
8 **INFORMATION**

9 **SEC. 301. PROTECTION OF CONFIDENTIALITY OF INFORMA-**
10 **TION.**

11 Information reported to, or otherwise acquired by, the
12 United States Government under this Act or under the
13 Additional Protocol shall be exempt from disclosure under
14 sections 552 of title 5, United States Code.

15 **TITLE IV—ENFORCEMENT**

16 **SEC. 401. RECORDKEEPING VIOLATIONS.**

17 It shall be unlawful for any person willfully to fail
18 or refuse—

19 (1) to establish or maintain any record required
20 by any regulation prescribed under this Act;

21 (2) to submit any report, notice, or other infor-
22 mation to the United States Government in accord-
23 ance with any regulation prescribed under this Act;
24 or

1 (3) to permit access to or copying of any record
2 by the United States Government in accordance with
3 any regulation prescribed under this Act.

4 **SEC. 402. PENALTIES.**

5 (a) CIVIL.—

6 (1) PENALTY AMOUNTS.—Any person that is
7 determined, in accordance with paragraph (2), to
8 have violated section 204 or section 401 shall be re-
9 quired by order to pay a civil penalty in an amount
10 not to exceed \$25,000 for each violation. For the
11 purposes of this paragraph, each day during which
12 a violation of section 204 continues shall constitute
13 a separate violation of that section.

14 (2) NOTICE AND HEARING.—

15 (A) IN GENERAL.—Before imposing a pen-
16 alty against a person under paragraph (1), the
17 head of an executive agency designated under
18 section 101(a) shall provide the person with no-
19 tice of the order. If, within 15 days after receiv-
20 ing the notice, the person requests a hearing,
21 the head of the designated executive agency
22 shall initiate a hearing on the violation.

23 (B) CONDUCT OF HEARING.—Any hearing
24 so requested shall be conducted before an ad-
25 ministrative judge. The hearing shall be con-

1 ducted in accordance with the requirements of
2 section 554 of title 5, United States Code. If no
3 hearing is so requested, the order imposed by
4 the head of the designated agency shall con-
5 stitute a final agency action.

6 (C) ISSUANCE OF ORDERS.—If the admin-
7 istrative judge determines, upon the preponder-
8 ance of the evidence received, that a person
9 named in the complaint has violated section
10 204 or section 401, the administrative judge
11 shall state his findings of fact and conclusions
12 of law, and issue and serve on such person an
13 order described in paragraph (1).

14 (D) FACTORS FOR DETERMINATION OF
15 PENALTY AMOUNTS.—In determining the
16 amount of any civil penalty, the administrative
17 judge or the head of the designated agency
18 shall take into account the nature, cir-
19 cumstances, extent, and gravity of the violation
20 or violations and, with respect to the violator,
21 the ability to pay, effect on ability to continue
22 to do business, any history of such violations,
23 the degree of culpability, the existence of an in-
24 ternal compliance program, and such other
25 matters as justice may require.

(E) CONTENT OF NOTICE.—For the purposes of this paragraph, notice shall be in writing and shall be verifiably served upon the person or persons subject to an order described in paragraph (1). In addition, the notice shall—

(i) set forth the time, date, and specific nature of the alleged violation or violations; and

(ii) specify the administrative and judicial remedies available to the person or persons subject to the order, including the availability of a hearing and subsequent appeal.

(3) ADMINISTRATIVE APPELLATE REVIEW.—

The decision and order of an administrative judge shall be the recommended decision and order and shall be referred to the head of the designated executive agency for final decision and order. If, within 60 days, the head of the designated executive agency does not modify or vacate the decision and order, it shall become a final agency action under this subsection.

(4) JUDICIAL REVIEW.—A person adversely af-

fected by a final order may, within 30 days after the date the final order is issued, file a petition in the

1 Court of Appeals for the District of Columbia Cir-
2 cuit or in the Court of Appeals for the district in
3 which the violation occurred.

4 (5) ENFORCEMENT OF FINAL ORDERS.—

5 (A) IN GENERAL.—If a person fails to
6 comply with a final order issued against such
7 person under this subsection and—

8 (i) the person has not filed a petition
9 for judicial review of the order in accord-
10 ance with paragraph (4), or

11 (ii) a court in an action brought under
12 paragraph (4) has entered a final judg-
13 ment in favor of the designated executive
14 agency,

15 the head of the designated executive agency
16 shall commence a civil action to seek compliance
17 with the final order in any appropriate district
18 court of the United States.

19 (B) NO REVIEW.—In any such civil action,
20 the validity and appropriateness of the final
21 order shall not be subject to review.

22 (C) INTEREST.—Payment of penalties as-
23 sessed in a final order under this section shall
24 include interest at currently prevailing rates
25 calculated from the date of expiration of the 60-

1 day period referred to in paragraph (3) or the
2 date of such final order, as the case may be.

3 (b) **CRIMINAL.**—Any person who violates section 204
4 or section 401 may, in addition to or in lieu of any civil
5 penalty which may be imposed under subsection (a) for
6 such violation, be fined under title 18, United States Code,
7 imprisoned for not more than five years, or both.

8 **SEC. 403. SPECIFIC ENFORCEMENT.**

9 (a) **JURISDICTION.**—The district courts of the United
10 States shall have jurisdiction over civil actions brought by
11 the head of an executive agency designated under section
12 101(a)—

13 (1) to restrain any conduct in violation of sec-
14 tion 204 or section 401; or

15 (2) to compel the taking of any action required
16 by or under this Act or the Additional Protocol.

17 (b) **CIVIL ACTIONS.**—

18 (1) **IN GENERAL.**—A civil action described in
19 subsection (a) may be brought—

20 (A) in the case of a civil action described
21 in paragraph (1) of such subsection, in the
22 United States district court for the judicial dis-
23 trict in which any act, omission, or transaction
24 constituting a violation of section 204 or section

1 401 occurred or in which the defendant is
2 found or transacts business; or

3 (B) in the case of a civil action described
4 in paragraph (2) of such subsection, in the
5 United States district court for the judicial dis-
6 trict in which the defendant is found or trans-
7 acts business.

8 (2) SERVICE OF PROCESS.—In any such civil
9 action, process shall be served on a defendant wher-
10 ever the defendant may reside or may be found.

11 **TITLE V—ENVIRONMENTAL** 12 **SAMPLING**

13 **SEC. 501. NOTIFICATION TO CONGRESS OF IAEA BOARD AP-** 14 **PROVAL OF WIDE-AREA ENVIRONMENTAL** 15 **SAMPLING.**

16 (a) IN GENERAL.—Not later than 30 days after the
17 date on which the Board of Governors of the IAEA ap-
18 proves wide-area environmental sampling for use as a safe-
19 guards verification tool, the President shall notify the ap-
20 propriate congressional committees.

21 (b) CONTENT.—The notification under subsection (a)
22 shall contain—

23 (1) a description of the specific methods and
24 sampling techniques approved by the Board of Gov-

1 errors that are to be employed for purposes of wide-
 2 area sampling; and

3 (2) a statement as to whether or not such sam-
 4 pling may be conducted in the United States under
 5 the Additional Protocol.

6 **SEC. 502. APPLICATION OF NATIONAL SECURITY EXCLU-**
 7 **SION TO WIDE-AREA ENVIRONMENTAL SAM-**
 8 **PLING.**

9 In accordance with Article 1(b) of the Additional Pro-
 10 tocol, the United States shall not permit any wide-area
 11 environmental sampling proposed by the IAEA to be con-
 12 ducted at a specified location in the United States under
 13 Article 9 of the Additional Protocol unless the President
 14 has determined and reported to the appropriate congres-
 15 sional committees that—

16 (1) the proposed use of wide-area environmental
 17 sampling is necessary to increase the capability of
 18 the IAEA to detect undeclared nuclear activities in
 19 the territory of a non-nuclear-weapon State Party;

20 (2) the proposed use of wide-area environmental
 21 sampling will not result in access by the IAEA to lo-
 22 cations, activities, or information of direct national
 23 security significance; and

24 (3) the United States—

1 (A) has been provided sufficient oppor-
 2 tunity for consultation with the IAEA if the
 3 IAEA has requested complementary access in-
 4 volving wide-area environmental sampling; or

5 (B) has requested under Article 8 of the
 6 Additional Protocol that the IAEA engage in
 7 complementary access in the United States that
 8 involves the use of wide-area environmental
 9 sampling.

10 **SEC. 503. APPLICATION OF NATIONAL SECURITY EXCLU-**
 11 **SION TO LOCATION-SPECIFIC ENVIRON-**
 12 **MENTAL SAMPLING.**

13 In accordance with Article 1(b) of the Additional Pro-
 14 tocol, the United States shall not permit any location-spe-
 15 cific environmental sampling in the United States under
 16 Article 5 of the Additional Protocol unless the President
 17 has determined and reported to the appropriate congres-
 18 sional committees that—

19 (1) the proposed use of location-specific envi-
 20 ronmental sampling will not result in access by the
 21 IAEA to locations, activities, or information of direct
 22 national security significance; and

23 (2) with respect to the proposed use of environ-
 24 mental sampling, the United States—

1 (A) has been provided sufficient oppor-
2 tunity for consultation with the IAEA if the
3 IAEA has requested complementary access in-
4 volving location-specific environmental sam-
5 pling; or

6 (B) has requested under Article 8 of the
7 Additional Protocol that the IAEA engage in
8 complementary access in the United States that
9 involves the use of location-specific environ-
10 mental sampling.

11 **TITLE VI—AUTHORIZATION OF** 12 **APPROPRIATIONS**

13 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such sums
15 as may be necessary to carry out this Act.

Calendar No. 385

109TH CONGRESS
2^D Session

S. 2489

[Report No. 109-226]

A BILL

To implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, signed by the United States on June 12, 1998.

APRIL 3, 2006

Read twice and placed on the calendar